



# United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street N.W.  
Washington, D.C. 20240

April 26, 2019

Western Values Project  
704C East 13<sup>th</sup> Street, Suite 568  
Whitefish, MT 59937  
Attn: Chris Saeger, Executive Director

Dear Mr. Saeger:

Subject: Response to Freedom of Information Act (FOIA) Request NPS-2019-00059

This letter is in response to your Freedom of Information Act (FOIA) request dated October 5, 2018, in which you requested:

*“... copies of all correspondence to or from the following individuals regarding Regulation Identifier Number (RIN) 1024-AE45: Special Regulations, Areas of the National Park System, National Capital Region, Special Events and Demonstrations, or any other official proposals to revise special regulations related to demonstrations and special events at certain national park units in the National Capital Region, from January 20, 2017 to present:*

- *Secretary Ryan Zinke*
- *Special Assistant Caroline Boulton*
- *Chief of Staff Scott Hommel*
- *Special Assistant to the Chief of Staff Elinor Renner*
- *Deputy Chief of Staff for Policy Downey Magallanes*
- *Deputy Chief of Staff for Operations Michael Argo*
- *Executive Assistant Lacey Smethers*
- *Senior Advisor Rick May*
- *Field Coordinator Evan Wilson*
- *Counselor to the Secretary for Energy Policy Vincent DeVito*
- *Advisor to Counselor Joshua Campbell*
- *Special Assistant to the Secretary David Mihalic*
- *White House Liaison Lori Mashburn*
- *Special Assistant to the Secretary Natalie Davis*
- *Deputy Secretary David Bernhardt*
- *Executive Assistant to the Deputy Secretary's Office Gareth Rees*
- *Deputy Director of Communications Russell Newell*
- *Deputy Director of Scheduling and Advance Leila Getto*
- *Chairman Jonodev Chaudhuri*

- *Executive Assistant to the Deputy Secretary's Office Catherine Gulac*
- *Associate Deputy Secretary James Cason*
- *Assistant Deputy Secretary Todd Willens*
- *Special Assistant Matt Dermody*
- *Counselor James Voyles*
- *Counselor Kate Mills*
- *Counselor Gary Lawkowski*
- *Deputy Assistant Secretary Ryan Hambleton*
- *Special Assistant Nicholas Davis*
- *Principal Deputy Assistant Secretary Jason Larrabee*
- *Deputy Assistant Secretary Aurelia Skipwith*
- *Senior Advisor Marshall Critchfield*
- *Deputy Director of the National Park Service P. Daniel Smith*
- *Special Assistant Brian Pavlik*
- *Director of the National Parks Service David Vela*
- *And individuals with e-mail addresses ending in "whitehouse.gov."*

We have completed our search for potential records held by the three National Park Service employees on this list: P. Daniel Smith, Brian Pavlik, and David Vela. We have located 2 email records, totaling 128 pages that are responsive to your request. We are releasing 3 pages in full. However, the remaining 126 pages, consisting of draft Federal Register notices, which were attached to the emails, are being withheld in full under Exemption 5.

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” [5 U.S.C. § 552\(b\)\(5\)](#); *see Nat'l Labor Relations Bd. v. Sears Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding this information because it qualifies to be withheld under the following privilege:

#### *Deliberative Process Privilege*

The deliberative process privilege protects the decision-making process of government agencies and encourages the “frank exchange of ideas on legal or policy matters” by ensuring agencies are not “forced to operate in a fish bowl.” *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) “assure that subordinates . . . will feel free to provide the decisionmaker with their uninhibited opinions and recommendations”; (2) “protect against premature disclosure of proposed policies”; and (3) “protect against confusing the issues and misleading the public.” *Coastal States Gas Corp. v. United States Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that “reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.*

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent final decisions or formal or informal agency policies or decisions. They are the result of various drafts, edits, and frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information could present cause confusion with what was actually published in the Federal Register.

Pursuant to regulation, 43 CFR 2.24(b) the following person is responsible for this denial:

Jessica McHugh  
WASO FOIA Liaison

Additionally the following attorney was consulted during the preparation of this response:

Jason Waanders, Office of the Solicitor  
U.S. Department of the Interior, Philadelphia, PA

You have the right to appeal this denial of your request. You may file an appeal by writing to:

Freedom of Information Act Appeals Officer  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C Street, NW  
MS-6556-MIB,  
Washington, D.C. 20240  
foia.appeals@sol.doi.gov

Your appeal must be received no later than 90 workdays after the date of this final response. The appeal should be marked, both on the envelope and the face of the appeal letter, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal should be accompanied by a copy of your original request and copies of all correspondence between yourself and the National Park Service related to this request, along with any information you have which leads you to believe the records are available, including where they might be found, if the location is known to you. Please note, appeals received after 5 p.m. EST will be considered to have been received as of the following day.

Also as part of the 2007 OPEN Government Act FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation.

You may contact OGIS in any of the following ways:

Office of Government Information Services (OGIS)  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Phone: 301-837-1996  
Fax: 301-837-0348  
Toll-free: 1-877-684-6448

Additionally, because the National Park Service creates and maintains law enforcement records, we are required by the Department of Justice to provide the following information, even though it may or may not apply to your specific request. Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that we are required to give all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Please do not hesitate to contact me, as the NPS FOIA Liaison with any further questions or concerns. I can be reached at the address above or by phone at 303-969-2959. I can also be reached via e-mail at [npsfoia@nps.gov](mailto:npsfoia@nps.gov).

Sincerely,

Charis Wilson  
NPS FOIA Officer